

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ENRIQUE CARRILLO-GARCIA,

Petitioner,

v.

CASE NO. 2:08-CV-734

CRIM. NO. 2:06-CR-271

JUDGE MARBLEY

MAGISTRATE JUDGE E.A. PRESTON DEAVERS

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On January 10, 2011, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, Petitioner's objections (Doc. 174) are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his habeas corpus petition. He argues that, under the policy of the Bureau of Prisons, he was considered to be in federal custody from the date of his arrest on charges in this case, *i.e.*, November 29, 2006, and therefore his October 25, 2007, sentence of five years incarceration on the underlying federal charge in this case (filed in a January 17, 2008, Judgment Entry of Sentence) should run from November 2006, because Petitioner was not sentenced on state charges until March 10, 2008. In support of this argument, Petitioner has attached a copy of his March 10, 2008 "Agreed Amended Judgment Entry" of sentence in the Franklin County Court of Common Pleas. *Exhibit to Objections*.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Petitioner's

argument is not persuasive. It appears from the record that the state trial court initially imposed four years incarceration in November 2007. In March 2008, however, the trial court reduced that sentence to accomodate the joint recommendation of the parties. Further, the sole issues for consideration in these proceedings is whether Petitioner was denied effective assistance of counsel and whether his guilty plea was not knowing, intelligent or voluntary based on the theory that he received an off-the-record promise that he would obtain credit on his federal sentence for time served on the related state charges. The record is without support for these claims. As discussed by the Magistrate Judge, defense counsel successfully obtained the minimum mandatory term of incarceration required for his offense of conviction. Neither the sentencing transcripts nor the PreSentence Investigation Report contain any reference to Petitioner's conviction and sentence in the state courts.

For these reasons and for the reasons already detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's objections (Doc. 127) are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge

DATED: March 21, 2011